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Letter dated 27 September 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 August 2002 (S/2002/957).

The Counter-Terrorism Committee has received the attached supplementary report from Cuba submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 24 September 2002 from the Permanent Representative of Cuba to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to transmit to you herewith the supplementary report of Cuba, submitted pursuant to paragraph 6 of resolution 1373 (2001) on the need to combat terrorism.

A set of documents containing the complete texts of various legal instruments mentioned in the supplementary report has also been attached.* These documents will be deposited with the United Nations Secretariat for further consultation.

(*Signed*) Bruno **Rodríguez Parrilla**
Ambassador
Permanent Representative

* The enclosures are on file with the Secretariat and are available for consultation.

Enclosure

[Original: Spanish]

Supplementary report of Cuba to the Counter-Terrorism Committee, submitted pursuant to Security Council resolution 1373 (2001)

Paragraph 1 (a)

I. Please explain what are the non-bank financial institutions that are required to report suspicious transactions according to Resolution No. 27 of 7 December 1997. Are intermediaries such as lawyers and notaries also required to report?

Banking mechanisms

Chapter I, "Definitions", of Decree-Law No. 173 of 28 May 1997 provides that a non-bank financial institution is any legal entity established in accordance with Cuban or foreign laws that employs brokers or agents conducting monetary transactions, and acting as financial intermediaries (with the exception of receiving deposits), such as entities which lease movable or immovable assets and those which manage collection and factoring portfolios; financial companies or firms dealing with trusts, and mutual investment funds; and other similar bodies.

Irrespective of the amounts involved, all funds handled by these institutions on behalf of national or international investors, must be channelled through an account or accounts in a Cuban commercial bank, in accordance with the provisions of Resolution No. 76, and as stipulated in Resolution No. 91 and Instructions Nos. 1 and 19 of the Superintendent of the Central Bank of Cuba, on the detection and prevention of movements of illicit capital, whatever the use to be made of the funds held in the bank accounts.

Under the provisions of Decree-Law No. 173 governing Cuban banks and non-bank financial institutions, of 28 May 1997, lawyers and notaries in Cuba are not authorized to engage in any form of financial transaction.

Only banks and non-bank financial institutions licensed by the Central Bank are authorized to carry out financial transactions in Cuba. No financial institution may conduct any business as a financial intermediary for which it is not licensed. Compliance with this principle is subject to inspection by agencies involved in banking oversight, through both on-site inspections and analysis of the financial statements which such institutions are required to submit on a monthly basis.

Since the implementation of the 2001 inspection plan, a decision was taken to inspect all banks in the Cuban financial system annually, and that decision has been strictly enforced.

Legal mechanisms

Under article 25.1 and 2 of Law No. 93 of 2000 entitled "Law against acts of terrorism", anyone who provides funds for acts of terrorism is subject to a prison sentence of ten to thirty years.

This Law does not link the main and accessory penalties because it is a special law which, in article 2, establishes that, depending on the offence in question, the provisions of the Penal Code, the Law on Military Offences and the laws relating to penal procedures shall be applicable. These are the main laws establishing penalties for the offences referred to in those laws.

Article 28 of Law No. 62, Penal Code of 1987, establishes the applicable main and accessory penalties. Paragraph 3, subparagraphs (f) and (g), contain provisions for the seizure or confiscation of assets.

Article 9 of Law No. 93 establishes that the court may, as an accessory penalty, order the confiscation of the defendant's assets, as provided for in article 44 of the Penal Code.

II. Have any penalties been handed down to bank or non-bank financial institutions that failed to report suspicious transactions under that Resolution?

To date, no financial institution has been penalized. In accordance with the guidelines stipulated by the Bank of Cuba, whenever suspicious transactions have been detected, they have been reported. Prevention compliance officials in branches of each financial institution up to the municipal level play a key role in this process and are responsible for on-site detection of any activity that might give rise to suspicion.

Paragraph 1 (c)

I. Is it possible to freeze funds and other financial assets pending an investigation if there is a reasonable suspicion that they are used or will be used for the financing of terrorist activities?

II. How long does it take in practice to freeze funds and other financial assets following an order of the pre-trial judge, the government attorney or the court?

III. Is it possible on request of another country to freeze funds and other financial assets held in Cuba belonging to non-resident persons and entities supporting terrorism outside Cuba?

I

Banking mechanisms

Instruction No. 19 of the Superintendent of the Central Bank of Cuba, of 7 May 2002, states that "banks are under an obligation to report immediately to the competent agencies of the Ministry of the Interior any complex transaction of an unusual magnitude and transactions which have an illicit purpose that indisputably demonstrates that a money-laundering transaction is in progress or that gives reasonable grounds for suspicion that funds are linked to, or will be used to support terrorism. Banks are authorized to take preventive action by blocking or freezing the funds and other financial assets of Cuban or foreign individuals or legal persons under suspicion. If the investigations duly indicate that the suspects are guilty, the

latter shall be formally charged before the competent court. If they are found guilty, a firm sentence shall be handed down, and the funds shall be seized by the Cuban Government."

Legal mechanisms

Article 8 of Law No. 93 grants authority to the pre-trial judge, the government attorney or the court to issue an order for the preventive attachment or freezing of the funds and other financial assets, property or economic resources of the defendants, and of any persons or entities acting under the defendants' orders, including funds obtained or arising from assets belonging to or under the control, direct or indirect, of the defendants and of persons and entities associated with them.

In addition, articles 135, 215, 218, 228, 229 and 230 of the Law on Penal Procedures (Law No. 5 of 1977) establish the obligation to confiscate any property instrumental to or resulting from the offence, to keep it and have it examined by experts where necessary; to enter public or private places for the purpose of confiscating such property and recording and confiscating documents, correspondence, papers or any other necessary items which may represent property instrumental to or resulting from the offence.

II. The procedure for freezing funds and other financial assets takes in practice 24 hours, running from the date and time of the notice of the order issued by any competent court in Cuba or government attorney. Furthermore, the Cuban justice system has extended the competence of fiscal and security judges to enable them to carry out this process.

III
Banking mechanisms

As long as there is evidence that irrefutably shows that money-laundering is taking place and that such funds may be used for financing acts of terrorism, irrespective of the nationality and domicile of the individual or legal person holding those funds, banks have the competence to take preventive action to block and freeze such funds.

If, with due regard for the proper procedures and our national legislation, a request is issued by another country for the freezing of funds of non-resident persons and entities supporting terrorism abroad, the Central Bank of Cuba is free to cooperate with such a request.

Legal mechanisms

Article 1.2 of Law No. 93, "Law against acts of terrorism", regulates this aspect and acts of terrorism are deemed to have been committed on Cuban soil, "... both if the perpetrator uses Cuban territory to carry out preparatory acts or acts related to execution, even if their effects are produced in another country, and if those acts are carried out on foreign soil and their effects are produced in Cuba".

With that definition in mind, the same provisions as relate to the first part of the question (article 8 of Law No. 93 and articles 135, 215, 218, 229 and 230 of the Law on Penal Procedures) may be applicable here also.

Paragraph 1 (d)

Is there any law regulating alternative money transfers agencies?

What laws and practical controls and surveillance measures exist to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted to other purposes?

Banking mechanisms

Decree-Law No.173 of 28 May 1997, chapter II, provides: "In order to do business in Cuba, any type of financial agency or representational office requires the prior issuance of the appropriate authorization by the Central Bank of Cuba."

To this end, a licensing commission was established by Resolution No. 24 of the Minister-President, of 24 March 1999, and is presided over by the Superintendent of the Central Bank of Cuba. The Licensing Commission considers requests submitted with the necessary documentation, examines them thoroughly and in depth and, on the basis of that examination, decides whether to issue the authorization. The Board of Directors of the Central Bank of Cuba discusses the decision and makes the final determination, which is irreversible and cannot be appealed.

Paragraphs 2, 3 and 4 of Instruction No. 19 of the Superintendent of the Central Bank of Cuba establish the requirements and explain the procedures for entities and persons of every type that are interested in the transfer of money and securities. If there is good reason to suspect that the transaction is connected with or is to be used for the financing of terrorist acts, the banks must refuse to transfer the funds and securities in question.

Paragraphs of the regulating instrument

Paragraph 2: "Individuals or legal persons interested in transferring money or securities will have to provide Cuban banks with the appropriate authorization from the Central Bank of Cuba and be registered in Cuba, as required by current Cuban legislation".

Paragraph 3: "Before making an electronic transfer of funds, banks must obtain accurate particulars from the client, including the full name, address and account number. The information will be kept together with the transfer form or related message for at least five (5) years from the date on which the account is closed and the transaction is finalized".

Paragraph 4: "Banks are required to investigate and monitor fund transfers in transactions which lack some of the information referred to in the preceding paragraph and therefore give rise to suspicion of an unlawful activity; in other words, they have the authority not to transfer funds if they have good reason to suspect that such funds are connected with or may be used for the financing of terrorist acts".

Legal mechanisms

Law No. 54 of 27 December 1985, the Associations Act, regulates the right to associate and the formation of associations in Cuba.

The Ministry of Justice is the organ entrusted with granting or withholding permission for the formation of an association. In all cases, the objectives and future activities must be established and inscribed in the register of national associations attached to the Ministry.

Through the registers of associations, the Ministry of Justice is able to monitor, oversee and inspect associations in order to ensure that they are functioning in accordance with existing legal norms, and it can impose administrative penalties when these are violated.

Banking mechanisms

Paragraph 5 of Instruction No. 19 issued by the Superintendent of the Central Bank of Cuba on 7 May 2002 specifies:

> "Special attention must be paid to operations carried out by so-called non-profit organizations, which may:
>
> "Be used by terrorist organizations claiming to be legally constituted;
>
> "Take advantage of legitimate entities by channelling funds for financing terrorism through them, with a view to avoiding the freezing of their assets;
>
> "Conceal the fact that funds are clandestinely diverted from legitimate uses to terrorist organizations".

The bank at which the non-profit organization is authorized to open an account in national or non-convertible currency is required to apply the provisions of Resolution No. 91 of the Minister-President of the Central Bank of Cuba and of Instruction No. 1 of the Superintendent of the Central Bank of Cuba regarding the "know-your-client" policy.

Whenever it has good reason to suspect the possible use of available funds to finance terrorist acts in or from Cuba, it will take appropriate steps, making use of the powers granted under Instruction No. 19 of the Superintendent of the Central Bank of Cuba and applying fully the provisions of paragraph 6.

Paragraph 2 (a)

Are there any legal provisions or other measures that prevent recruitment in Cuba to terrorist groups abroad?

Please outline in detail the legal provisions and procedures regulating the manufacture, sale, possession, acquisition, storage and transport of weapons in Cuba. How is international trade in weapons dealt with and regulated?

Law No. 93 contains the provisions which prohibit recruitment for the purpose of forming terrorist groups. It covers behaviours prohibited in international conventions on terrorism and includes in article 10 "anyone who manufactures, provides, sells, transports, sends, introduces into the country or possesses, anywhere or in any form, weapons, ammunition, inflammable substances, plastic explosives or explosive or lethal devices, among other things". The penalty it establishes is a prison sentence of between 10 and 30 years, imprisonment for life or death.

Article 5 of Law No. 93 specifies that the following are punishable:

Trying to involve others in acts of terrorism;

Plotting with one or more persons to commit the offences prohibited by the provisions of the Law;

Inciting or inducing someone to commit such offences.

In addition, articles 26, 27 and 28 of Law No. 93 penalize:

Covering up acts of terrorism;

Failure to report such acts;

Any other act with terrorist ends for which a harsher penalty has not been established.

Terrorism is also covered in Law No. 62 (Penal Code), which in Title I, relative to crimes against the security of the State, chapter II, seventh section, article 106, provides for the crime of terrorism and specifies penalties ranging from 10 to 20 years' imprisonment or the death penalty.

Chapter X of the Penal Code, which deals in articles 211 and 213 with the illegal carrying and possession of firearms and explosives, also provides for penalties ranging from fines to prison sentences lasting between six months and 10 years, depending on:

The type of weapon;

The place and action;

Whether possession or carrying was involved;

Manufacture;

Sale and delivery of firearms or explosives.

International trade in and imports and exports of arms and explosives can be carried out by State entities only, and they must have the authorization of the Ministry of the Interior of Cuba (MININT); prior application must be made to MININT in order to obtain the necessary permit before any such commercial transaction is carried out.

Should arms and explosives reach the borders of Cuba without the authorization of MININT, they will be moved immediately to the customs warehouse, where they will remain in the custody of the customs service until their final destination has been decided upon.

Also relevant is Decree-Law No. 52/82 on arms and ammunition and the implementing regulations in Resolution 19/82.

This legislation regulates the manufacture, sale, possession, acquisition, storage and transport of arms and explosives in Cuba. It is currently undergoing improvement, a new decree-law on arms and ammunition which deals in greater depth with international trade matters having been proposed.

Paragraph 2 (b)

Please describe the mechanism for inter-agency cooperation amongst the authorities responsible for narcotics, financial tracking and security in particular regard to border controls to prevent the movement of terrorists.

Please describe the mechanism to provide early warning of anticipated terrorist activity to other countries.

I

Banking mechanisms

The Central Bank of Cuba belongs to the National Commission on Drugs, which is attached to the Ministry of Justice of the Republic of Cuba, and, as a member of that Commission, its Superintendent and the Central Risk Information Office — established under Resolution No. 27 of the Minister-President of the Central Bank of Cuba — participate in an information exchange on measures for the prevention and detection of illicit funds.

In addition, a real-time cooperative relationship has been established between the offices of the central, provincial and branch banks, in conjunction with the investigative organ of the Ministry of the Interior (Independent Section of the Technical Directorate of Investigations), and between that body and the Central Risk Information Office of the Central Bank of Cuba.

When the Central Risk Information Office receives a request for information from the Ministry of the Interior, the Office of the Attorney General of the Republic, the Ministry of Audit and Control or any other central government agency in Cuba regarding the pursuit of possible criminals with funds in accounts within the Cuban banking system, irrespective of any financial activities they may be implicated in, it is immediately (within 24 hours) circulated to the relevant departments of the respective banks, in conformity with laws governing bank secrecy.

Other mechanisms

In Cuba, the Ministry of the Interior (MININT) maintains a presence in all international airports and at all border points, to ensure the coordination of all the bodies of MININT, the Armed Forces and the State that operate along the national borders, with a view to the suppression of criminal activities, including terrorist acts.

The national customs service also participates in this system, and is responsible, inter alia, for monitoring the entry of merchandise into the national territory, with a view to preventing international smuggling and the entry of explosives, weapons, drugs, and the like.

This border system carries out daily advance information studies on flights and coordinates the purchase and use of explosives-detection equipment and X-ray equipment for border crossing points, the availability and use of dogs trained to detect explosives, drugs and other dangerous substances, and selective spot checks to monitor suspicious persons as they enter the country.

These procedures are applied, with location-specific approaches, at border points in the principal marinas and international ports.

II. Cuba has reaffirmed its commitment not to permit the use of its territory for activities of a terrorist nature and is strictly monitoring adherence to that commitment.

Cuban security organs maintain contact with a number of foreign intelligence services, and such contacts are used for the exchange of pertinent information

regarding persons suspected of carrying out actions against Cuba or actions that could be harmful to third States.

Recently, Cuba formally proposed to the United States that they should conclude three bilateral cooperation agreements to combat terrorism, drug trafficking and illegal migration. The United States Government rejected the Cuban proposal.

As a preventive measure, Cuban personnel who work with air and maritime operations in countries considered to be at risk are being trained to detect signs of terrorist activities. Where necessary, specialists in explosives and other security issues are incorporated into crews on ships navigating foreign waters and into teams working in foreign airports.

Moreover, in accordance with title I of Law No. 93, article 2, any preparatory acts detected by the authorities in national territory which demonstrate the intent to carry out terrorist acts in other countries are punishable.

Paragraph 2 (c)

What legal provisions and procedures exist in Cuba to deny safe haven to terrorists, such as provisions relating to excluding or expelling the types of individuals referred to in this subparagraph?

Cuba has concluded extradition agreements with many countries, establishing that terrorists that have committed acts against third states shall be handed over to them, if such countries provide the necessary proof.

Cuban law also establishes that persons that have committed terrorist acts in other countries are justiciable in Cuba, if the country concerned provides the necessary proof.

Cuban law also envisages that any individual suspected of carrying out terrorist acts or any other act of a criminal nature shall be denied entry into the country, permanently or temporarily, or shall be expelled from the national territory.

The first section of title I, chapter III, of the Penal Code criminalizes hostile actions against a foreign State and the violation of the sovereignty of a foreign State, and the seventh and eighth sections of that chapter criminalizes piracy and mercenarism.

These legal provisions enable the authorities to prosecute and punish the perpetrators of terrorist acts or other types of aggression against other countries and establish punishments ranging from 4 years of imprisonment to the death penalty.

Paragraph 2 (d)

What is the competence of the courts of Cuba, apart from the competence in regard to the Law against Acts of Terrorism, to deal with criminal acts of each of the following kinds:

- **an act committed outside Cuba by a person who is a citizen of, or habitually resident in, Cuba (whether that person is currently present in Cuba or not);**

- **an act committed outside Cuba by a foreign national who is currently in Cuba?**

Legal mechanisms

The statements of the Government of Cuba and the introduction to Law No. 93, Law against Acts of Terrorism, reaffirm Cuba's unswerving determination never to allow the territory of the Cuban State to be used to organize, instigate, support or execute terrorist actions, regardless of the ultimate target of such actions and whether or not Cuba will be directly affected by the perpetration of such acts. Cuba has repeatedly expressed its firm readiness to cooperate with all other countries to prevent and punish terrorist acts.

Cuba firmly upholds its decision not to permit known terrorists to enter the national territory, in accordance with national laws and with existing international legal arrangements regarding terrorism.

Accordingly, article 1.2 of Law No. 93 determines that acts shall be punishable in Cuba and "shall be deemed to have been committed on Cuban soil both if the perpetrator uses Cuban territory to carry out preparatory acts or acts related to execution, even if their effects are produced in another country, and if those acts are carried out on foreign soil and their effects are produced in Cuba".

Furthermore, articles 110, 111 and 112 of the Penal Code establish penalties for those who carry out enlistment or other hostile acts against a foreign State or recruitment in the national territory for the military service of a foreign State and for those who carry out an act intended to undermine the independence of a foreign State.

In addition, article 5 of the Penal Code establishes that "Cuban penal law is applicable to Cubans and non-citizens resident in Cuba who commit a crime abroad, if they are in Cuba or have been extradited; to Cubans who commit a crime abroad and are surrendered to Cuba to be prosecuted by its courts, in accordance with agreements concluded; and to foreigners and non-citizens not resident in Cuba who commit a crime on foreign soil, if they are in Cuba and have not been extradited, whether they reside in the territory of the State in which the acts are perpetrated or in any other State, so long as such action is also punishable in the place where it was committed," a requirement which is not applicable if the act constitutes a crime against the fundamental, political or economic interests of the Republic, or against humanity, human dignity or collective health, or is justiciable under international agreements.

Paragraph 2 (f)

What is the legal time frame within which a request for judicial assistance in criminal investigations or criminal proceedings (especially those relating to the financing or other support of terrorist acts) is required to be met and how long, on average, does it take in practice to implement such a request in Cuba?

Peoples Courts Law No. 82, article 14, states that "the people's courts shall execute letters rogatory in accordance with the provisions of international conventions and treaties or on the basis of the legislation currently in force". Article 175 of the Law on Penal Procedures states that "in the absence of a convention or

treaty, letters rogatory shall be transmitted through the diplomatic channel in accordance with international practice".

Cuba is also a signatory to the Convention on Private International Law (Bustamante Code), articles 388 to 393 of which regulate the transmittal of letters rogatory between the authorities of the States parties.

Peoples Courts Law No. 82 of 11 July 1997, article 14, states that "the courts shall assist each other in implementing all necessary procedures outside the territory of their respective countries".

The form and processing of letters rogatory delivered to foreign courts shall be consistent with the requirements established in international conventions or treaties, in the absence of which they shall be transmitted through the Ministry of Foreign Affairs and their form shall be modified to conform to the procedures followed by that Ministry.

Article 14 also states that "the peoples' courts shall execute letters rogatory transmitted by foreign courts, provided that they are received through the channels and in accordance with the requirements established in international conventions or treaties, or, in the absence thereof, in the legislation currently in force".

Article 39 of the Law on Penal Procedures states that "if a judicial procedure must be executed by a judge, government attorney or court other than the one which issued it, the latter shall provide written authorization for its execution".

If a judge, government attorney or court orders a judicial procedure to be executed outside the country, article 175 of this Law shall apply.

Article 175 states that "if the witness resides outside the national territory, treaties concluded with the country in question shall apply; in the absence thereof, the letter rogatory shall be transmitted through the diplomatic channel in accordance with international practice, taking into account the relevant legal procedures required by the country in which execution is to be performed".

The letter rogatory must include the necessary background information and indicate the questions to be put to the witness; however, the foreign authority or court may expand upon them as dictated by its discretion and good judgement.

Article 173 of the Law on Civil, Administrative and Industrial Procedures states that "the courts shall cooperate with and assist each other in the execution of all legal procedures to be carried out within their jurisdiction at the request of the court of another jurisdiction".

It also states that "the authorities, agents and other officials of the State shall assist the courts, at the latter's request, within the scope of their respective mandates; any unjustified refusal or resistance shall give rise to criminal and civil responsibility".

By Decision No. 419, Item No. 26, of 5 October 1978, the Council of Government of the Supreme People's Court stated that the courts have an obligation to provide legal assistance at the request of another court.

By Decision No. 13, Item No. 329, of 15 April 1992, the Council of Government also stated that "on receipt of a written request for legal assistance, the requested court shall temporarily assume the jurisdiction and rank of the requesting

court and shall use all means and take all measures to ensure the effective execution of the request".

In the case of letters rogatory sent by foreign courts to the competent Cuban courts on the basis of reciprocity, the following procedures shall be followed:

1. The diplomatic channel shall be used; this means that the authorities of the country shall send the documents, duly translated where necessary, through its embassy in Havana or, in the absence thereof, its consulate or interests office.

2. After certifying the documents in question, the foreign embassy in Cuba shall transmit them to the Ministry of Foreign Affairs, which shall refer them to the competent Cuban court.

3. Once they have been executed by the competent court, which shall be determined in the light of the complexity of the request to be executed, the documents shall be returned to the country of origin through the same channel.

4. If there is a bilateral agreement between Cuba and the requesting country, its provisions shall take precedence over the above-mentioned procedure, which may therefore be modified in accordance with the relevant regulations agreed by the two countries.

5. To date, Cuba has concluded legal assistance agreements with 31 States and agreements on the execution of decisions in criminal matters and the transfer of sentenced persons with 11 other States.

Paragraph 2 (g)

Please explain how the procedures for the issuance of identity papers and travel documents help prevent counterfeiting, forgery or fraudulent use of those documents.

Legal mechanisms

Passports are considered official documents because they are issued and authorized by public officials according to the specific criteria established by law and because they contain visa stamps. For this reason, passport forgery constitutes an offence under the head of forgery of official documents which is defined in article 250 of the Penal Code and carries a sentence of three to eight years' imprisonment.

Forgery of identity cards, provisional identity papers or other identity papers; use or possession of such forged documents; and manufacture, introduction or possession of instruments used for forgery are punishable under articles 252, 255 and 259 of the Penal Code.

Other mechanisms

Article VII of the Penal Code deals with offences involving official documents; Chapter III, article 255, thereof covers document forgery, which is punishable by a prison sentence of three months to one year or a fine. According to paragraphs D and E of article 255, the submission of such documents to a government authority or official carries a penalty.

Article 259 of the Code makes the manufacture, introduction or possession of instruments used in the forgery of such documents punishable by two to five years' imprisonment.

Consideration is being given to incorporating security mechanisms into identity and travel documents in order to detect their forgery. These protection and security measures have been modernized and improved and are used in the case of identity cards and passports.

Cuban and foreign travellers are carefully checked at all border points upon arrival and departure by specialized officials of the Ministry of the Interior's Department of Immigration and Aliens.

Paragraphs 3 (a) and 3 (b)

What mechanisms and arrangements exist to meet the requirements of these subparagraphs?

> **"(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;"**
>
> **"(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;"**

Legal mechanisms

The Law on Penal Procedures (art. 38 ff.) states that "judges, government attorneys and courts shall assist each other in implementing the necessary procedures for the compilation of files and the preparation of criminal cases".

Memorandums of understanding on cooperation in combating serious offences, organized crime, illicit traffic in narcotic drugs and similar matters of mutual interest are being concluded between the Cuban Ministry of the Interior and analogous bodies in other countries.

Cuba is a party to the memorandum of understanding on mutual assistance and cooperation between the forensic laboratories of the Caribbean, a primary focus of which is the exchange and provision of information.

This memorandum was inspired by the need for the Caribbean countries to combine efforts and to achieve the closest possible cooperation between their forensic laboratories with a view to improved prevention of crimes affecting their economic, fiscal, social and cultural interests, including terrorism and illicit traffic in narcotic drugs and psychotropic substances.

For its part, Cuba has processed all the information on suspicious passports and other forged documents which it has received from other countries.

Other mechanisms

In addition to the above-mentioned contacts with the security agencies of other countries, there is an International Criminal Police Organization (Interpol) office in Havana, which operates in Cuba through the National Revolutionary Police Department in the Ministry of the Interior.

This office has established procedures for handling reports on international criminals wanted by Interpol; these include posting their names at border points on a case-by-case basis as requiring notification, identification at the border or prohibition of entry.

Through this mechanism, other countries can request and receive from or send to the Cuban authorities information on persons who are suspected of committing or have committed terrorist acts or other offences of international scope.

The Cuban Interpol office can also request information on terrorists or other international criminals of interest to it from other countries.

Since 19 October 2001, the date on which Interpol's international bulletins were first received, information has been provided or requested on over 100 foreign citizens of various nationalities suspected of terrorist acts, including presumed participants in the tragic events of 11 September.

Information on these people is part of the relevant security procedures so that they can be identified on arrival in Cuba or if evidence of their prior presence there is found.

Persons accused of armed assault, aircraft hijacking and planting of explosive devices have been posted as wanted by Turkey, Egypt, the United States of America, Argentina, Oman, Libya, Spain, Belgium and Germany.

Paragraph 3 (c)

Has Cuba entered into any new agreements on cooperation with other countries since the entry into force of the special provision of the law against acts of terrorism?

No, but Cuba introduced a draft agreement on migration issues during its discussions on migration with the United States in December 2000. It repeated its proposal during the talks held in June and December 2001. During the December 2001 talks, it introduced two other draft agreements, one on cooperation in combating illicit traffic in narcotic drugs and psychotropic substances and one on bilateral cooperation in the fight against terrorism.

On 12 March 2002, by means of a note verbale addressed to the United States Interests Section in Cuba, our Government reiterated its interest in signing these three agreements with the United States. The proposal was rejected by the Government of the United States.

On 18 September, His Excellency Mr. Felipe Pérez Roque, Minister for Foreign Affairs of the Republic of Cuba, speaking in New York City in response to accusations levelled by Daniel W. Fisk, Deputy Assistant Secretary of State, stated that:

- An issue as serious and fundamental to all as international cooperation to combat terrorism should not be manipulated for political purposes.
- There is no justification for the Bush Administration's irrational rejection of the Cuban proposal to enter into bilateral agreements to combat terrorism, drug trafficking and illegal emigration.

In the context of this cooperation, our country:

1. Offered medical assistance and rehabilitation for the victims of the terrorist crime of 11 September and offered to allow our airports to be used in that connection.

2. On 26 October, in the midst of the anthrax crisis, Cuba offered to supply 100 million tablets of the anti-anthrax antibiotic ciprofloxacin to the United States Government. There was no reply.

3. On 27 October, Cuba donated 100 tablets of ciprofloxacin for the diplomatic personnel of the United States Interests Section in Havana.

4. On 12 November, Cuba offered equipment developed in our country which can be used to identify germs, and thus to distinguish between different strains of anthrax, both rapidly and inexpensively.

In his speech, the Foreign Minister of Cuba announced that his Government planned to accede to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and to ratify the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco). Among other things, the Minister stated the following:

> "Up to now, even though Cuba has not developed and has no intention of developing nuclear weapons, it has not become a State party to the Treaty on the Non-Proliferation of Nuclear Weapons. This is because of the inadequate and discriminatory nature of the instrument, which allows for the establishment of a club of nuclear Powers that are not truly committed to disarmament. However, as an indication of the Cuban Government's political will and its commitment to effective disarmament to guarantee world peace, our country has decided to accede to the Treaty on the Non-Proliferation of Nuclear Weapons. We thus reaffirm our desire for the total elimination, under strict international verification, of all nuclear weapons.
>
> "In addition, and despite the fact that the only nuclear Power in the Americas follows a policy of hostility towards Cuba which does not exclude the use of force, Cuba will also ratify the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, known as the Treaty of Tlatelolco, which we signed in 1995."

With this decision, Cuba has shown its willingness to cooperate in the struggle against terrorism. Considering that the International Atomic Energy Agency (IAEA) has received a mandate to take action to this end, the non-proliferation of nuclear weapons is an important aspect of the fight against terrorism.

Paragraph 3 (e)

I. Have the crimes set forth in the relevant international conventions and protocols on terrorism been included as extraditable offences in the bilateral treaties to which Cuba is a party?

II. Please describe what measures have been taken to implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection.

I. Existing bilateral agreements and treaties on extradition are being brought up to date with a view to improving the national legal order and bringing it into line with the general principles and rules of international law on the subject of extradition.

II. Cuba is a State party to the Convention on the Marking of Plastic Explosives for the Purpose of Detection and is in full compliance with the provisions of that Convention.

As regards application of the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Cuba uses different techniques for the detection of explosives in order to prevent and curtail terrorist activities against the country.

The legal regime includes regulations and provides the necessary authority for the inspection, surveillance and monitoring of imports, exports, transport, storage, use, destruction and deactivation of industrial explosives, starting mechanisms and chemical precursors. These procedures are all adequately implemented and monitored.

No plastic explosives are manufactured in Cuba for either civilian or military use. The country is therefore not required to purchase chemical substances to render explosives detectable, as established in the Convention.

Paragraph 3 (f)

Please outline specific legal provisions and procedures that contribute to achieving the requirement of this subparagraph.

> **"(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts."**

Cuba does not grant refugee status. Cuba is not a State party to the 1951 Convention relating to the Status of Refugees or to the 1967 Protocol relating to the Status of Refugees. However, its treatment of applicants for refugee status and recognized refugees is based on the principles of refugee law. Contrary to many other countries, Cuba does not have a national committee on eligibility. Instead, applications for refugee status must be submitted to the Office of the United Nations High Commissioner for Refugees (UNHCR) in Havana, which makes a determination in conjunction with the Regional Office in Mexico.

The treatment given by the migration authorities to applicants for refugee status and recognized refugees is based on the decisions of the Regional Office of UNHCR in Mexico. The Ministry of Foreign Affairs, the National Directorate of

Immigration and Foreigners and UNHCR authorities work in close coordination with each other.

The historical record shows that the decisions of UNHCR are trustworthy. No recognized refugee or applicant has ever been involved in activities that might in any way be related to terrorism.

Paragraph 3 (g)

What is the legal basis for extradition in Cuba? Is it governed by legislation, treaties or both?

Please explain whether claims of political motivation are recognized as grounds for refusing requests for extradition of alleged terrorists.

Article 6 of the Cuban Penal Code, which is based on the Constitution of the Republic of Cuba, provides that no Cuban citizen may be extradited to another country.

The extradition of foreigners is carried out in accordance with international treaties or, in the absence of such treaties, in accordance with Cuban law.

Article 437 of the Law on Penal Procedures provides that extradition requests may be granted in specific cases provided for in existing treaties with the State in whose territory the person sought is located. In the absence of a treaty, extradition may be granted based on the principle of reciprocity.

Cuba has signed extradition agreements with 11 countries. In the case of the United States, it has signed two extradition treaties and an additional protocol (1904 and 1926). These agreements have not been honoured by the United States since 1959, even though they remain in force.

In the multilateral sphere, Cuba is a party to the international agreements on terrorism that have been adopted within the framework of the United Nations. Cuba applies the provisions on extradition set forth in such treaties on a case-by-case basis.

Cuba is also a party to the Convention on Private International Law (Bustamante Code) signed in Havana on 13 February 1928.

The fourth preambular paragraph of Law No. 93 against Acts of Terrorism states that "the National Assembly of People's Power, on behalf of the people of Cuba, rejects and condemns the acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed and for whatever reasons, including those which jeopardize relations between States or peoples and threaten and represent an attack against the territorial integrity, peace and security of States. Terrorism is a dangerous and ethically indefensible phenomenon which must be eradicated".

Article 6 (3) of the Penal Code provides that foreigners who are persecuted because they have fought against imperialism, colonialism, neocolonialism, fascism or racism or because they have defended democratic principles or the rights of the working people shall not be extradited.

Paragraph 4

Has Cuba addressed any of the concerns expressed in paragraph 4 of the resolution?

> **"4. *Notes* with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard *emphasizes* the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;"**

Banking mechanisms

Although the Central Bank of Cuba does not belong to any subregional, regional or international organization cooperating in efforts to counter illegal capital movements or money-laundering, its organizational framework and regulations allow it to cooperate with any country, in accordance with the principles of sovereign equality, respect for territorial integrity and non-interference in the internal affairs of Cuba and its financial system.

Thanks to its financial regulations and laws, Cuba is not a tax haven, nor could it become one. All financial institutions, regardless of their line of business and taking into account the requirements specified in the licence authorizing them to set up in the national territory, are subject to thorough and comprehensive inspections, and are liable to pay taxes, pursuant to the Law on Foreign Investment and the National Office of Tax Administration of the Ministry of Finance and Prices. In order to operate in Cuba, they must first register at the General Registry of Banks and Non-Bank Financial Institutions, which is kept at the Central Bank of Cuba.

Legal mechanisms

In this regard, one should refer to the position of Cuba in combating all of these phenomena, as well as to the Conventions it has signed in each of these areas, especially those relating to transnational organized crime, such as the Palermo Convention, and including others concerning offences such as terrorism and drug-related crime.

The use of nuclear, chemical and biological materials for the purposes of terrorism is referred to in article 10 of Law No. 93. Moreover, articles 185 and 186 of the Penal Code provide for a penalty of between 3 and 12 years' imprisonment for breach of the rules concerning the use and storage of radioactive substances or other sources of ionizing radiation.

It should be pointed out that, even though Cuba is not a drug-producing country and does not possess laboratories engaged in manufacturing illicit drugs, and despite the fact that its people are not in the habit of producing or consuming illegal drugs, we have taken a number of drug control measures since, in view of our geographical location, we are caught between the large producers of the South and the consumers of the North, and international drug traffickers carry out frequent operations in the areas surrounding our territory.

Cuba is a party to the main international agreements and conventions on drug control, including the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic Substances, 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

We have signed bilateral cooperation agreements with 29 countries, and the National Drug Control Directorate cooperates in the exchange of expertise and information with 12 national drug control agencies in countries with which no official government agreement has been signed.

The National Drug Commission, chaired by the Minister of Justice, was set up in 1989, and the Ministry of Public Health, the National Bank, the Central Bank of Cuba and the General Customs Service have adopted various resolutions pertaining to drug control, the detection and prevention of illicit capital movements, international travel bans and the issuance of bans on clearing goods through customs.

In 1993, the Master Plan of the Republic of Cuba to Combat Illicit Drug Trafficking was adopted as a national strategy and, in August 1999, the Comprehensive National Programme for the Prevention of Illicit Drug Use was adopted, which included taking important steps in the field of prevention and enhancing the coordination of efforts to control and combat illicit trafficking.

Articles 190 and 193 of the Penal Code establish severe penalties for activities related to the manufacture, sale, purchase, trafficking, distribution and possession of narcotic drugs, psychotropic substances or other products having similar effects, ranging from prison sentences of up to 30 years to the death penalty, for cases involving illegal international trafficking or the exploitation of persons under 16 years of age.

Articles 311, 313 and 314 of the Penal Code establish penalties for anyone permitting or encouraging minors to take drugs.

Article 346 of the Penal Code establishes the penalty of between 5 and 12 years' imprisonment for money-laundering the proceeds (directly or indirectly) of activities related to the illicit trafficking of drugs, arms or persons, or in connection with organized crime.

The Government of Cuba has always stressed that, in order to resolve the drug problem in the contemporary world, effective measures must be taken to reduce the demand for drugs, narcotics, psychotropic substances and other products having similar effects in consumer countries. Such measures would have a greater impact on this phenomenon than measures that punish cultivators and small dealers.

Annex

List of legal instruments mentioned in the report that will be deposited with the United Nations Secretariat for consultation

(1) Law No. 62, Penal Code;

(2) Law No. 5, Law on Penal Procedures;

(3) Law No. 93, Law against Acts of Terrorism, Official Gazette No. 14;

(4) Law No. 82, Law on People's Courts, Official Gazette No. 8;

(5) Legal Basis for the Organization of the Banking System in Cuba:

  (a) Decree-Law No. 172 of the Central Bank of Cuba;

  (b) Decree-Law No. 173 on Banks and Non-Bank Financial Institutions;

  (c) By-laws of the Central Bank of Cuba;

(6) Banking and financial system of Cuba;

(7) Resolution No. 91/97 of the Central Bank of Cuba;

(8) Instruction No. 1 of the Central Bank of Cuba;

(9) Instruction No. 2 of the Central Bank of Cuba;

(10) Resolution No. 27/97 of the Central Bank of Cuba;

(11) Measures taken by the banking system to avoid and detect criminal activities.